

511 W. Melrose St., #401
Chicago, IL 60657

FEDERAL TRANSPORTATION
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July 5, 2001

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Docket Clerk
USDOT Dockets, Room PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590

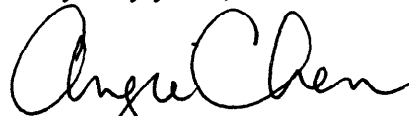
Re: Docket No. FHWA-97-2979-60

Dear Sir or Madame:

As a follow-up to my comments filed on February 15, 2001 (Document FHWA-1997-2979-58), I am submitting the enclosed letter to Rep. Thomas Petri, Chairman of the House Subcommittee on Highways and Transit, along with materials regarding my pending lawsuit against Mayflower Transit, Inc. These materials include a recent order by a federal judge allowing my Racketeer Influenced and Corrupt Organizations Act (RICO) claim to go forward against Mayflower. (See Chen v. Mayflower Transit, Inc., 2001 WL 630688 (N.D. Ill.))

As my experience demonstrates, in the absence of any authority by the States to prosecute unscrupulous interstate moving companies, and with individual consumers prevented by a century-old federal statute (the Carmack Amendment) from suing for fraud, these companies today face no significant consequence for unethical and fraudulent business practices, even should they be found out. Until the day that the interstate household goods moving industry loses its special protection and is made subject to the same penalties other industries face when they prey upon consumers, it is necessary that the FMCSA make the most of its limited resources to protect consumers. The regulations and the language in the "Your Rights and Responsibilities When You Move" booklet must be drafted as stringently as possible in favor of the individual consumer. A moving company that has mistreated a consumer must not be permitted to argue, after the fact, that the language in this booklet -- or that the U.S. Department of Transportation itself -- condones low-balling, bait-and-switch, and hostage freight tactics.

Very truly yours,


Angie Chen

Encl.

July 5, 2001

The Honorable Thomas Petri
Chairman
Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
United States House of Representatives
B-370A Rayburn House Office Building
Washington, D.C. 20515-6261

**Re: Hearing on Oversight of the Household Goods Moving Industry;
RICO lawsuit against Mayflower Transit, Inc.**

Dear Representative Petri:

I am writing in regard to the Congressional hearing on consumer protection issues in the household goods moving industry scheduled for July 12, 2001. I have attached court documents filed in connection with my lawsuit against one of the major van lines, Mayflower Transit, Inc., currently pending in federal court in the Northern District of Illinois. In a recent opinion and order (enclosed), Magistrate Judge Geraldine Soat Brown permitted me to proceed against Mayflower under the Racketeer Influenced and Corrupt Organizations Act (RICO). (*See Chen v. Mayflower Transit, Inc.*, 2001 WL 630688 (N.D. Ill.)). The predicate acts upon which my RICO suit is based are mail fraud, wire fraud, and extortion under the Hobbs Act. To my knowledge, this is the first lawsuit of its kind against a moving company.

Racketeering Lawsuit Against Mayflower

The facts of my case are fully set forth in the court documents. In brief, they are as follows. In June 1999, I contracted with Mayflower to move my life's belongings from Atlanta, Georgia to Chicago, Illinois. Mayflower's contract stated that the fee for the move was "binding" and "guaranteed not to exceed" \$1741.89. However, when the moving van arrived in Chicago, Mayflower, without warning, demanded amounts ranging from \$2556.69 to \$5122.83, in cash, to cover claimed "additional services" and threatened to auction off my goods if they did not receive payment of the inflated fee. When I could not raise these extreme sums in cash on virtually no notice, Mayflower sent the moving van away with my property. I did not get my belongings back until more than three months later, when my lawyer filed an injunction to force their return. The Mayflower agent in Atlanta who gave the "guaranteed" estimate was Admiral

Moving & Storage, Inc. The Mayflower agent in Chicago who held my goods hostage, tried to extract an exorbitant fee, and threatened to sell my goods was Century Moving & Storage, Inc. (also known as "DuPage Moving & Storage") of Lombard, Illinois. As detailed in the court documents, Century also victimized another customer, Craig Pietrowiak, during his January 1999 move from Illinois to California. Century gave Mr. Pietrowiak a "not to exceed" estimate of \$1685.00 as the cost of his move. This estimate then ballooned to a demand for \$2609.00, a demand made after Mr. Pietrowiak's goods were loaded onto Mayflower's truck. *See* Second Amended Complaint, Chen v. Mayflower Transit, Inc., no. 99 C 6261 (N.D. Ill. May 29, 2001); *see also* Pietrowiak v. Century Moving & Storage, Inc. no. 99 C 7419, 1999 WL 1295133 (N.D. Ill. Dec. 20, 1999).

Far from admitting that mistakes (much less wrongdoing) may have occurred, Mayflower, through its lawyers, contend that this conduct is "per se legal" and, incredibly, that such practices are approved by the federal government. During the course of my lawsuit, Mayflower's corporate representative affirmatively stated that she has conducted no investigation into Century's actions -- despite provisions in Mayflower's own tariff requiring the investigation of overcharge complaints. (*See* attached deposition excerpts of Mayflower corporate representative). Although Mayflower has been ordered to answer my racketeering charges, it has failed to do so. Instead, it recently requested a reconsideration of the judge's decision to allow my RICO claim to go forward.

Federal Preemption Must Be Abolished

I am writing to beseech you to enact legislation that will authorize the States to prosecute interstate household goods moving companies. In addition, consumers must be enabled to pursue civil suits in tort against these companies. Because of a law enacted in 1906 known as the Carmack Amendment, 49 U.S.C. § 14706, an individual consumer who sues an interstate moving company is limited to recovering, as monetary damages, only the declared value of his or her household goods. Courts have interpreted the Carmack Amendment in such a manner as to preempt virtually all state law claims against these companies, including tort claims of fraud and claims under state deceptive trade practices statutes. *See Gordon v. United Van Lines, Inc.*, 130 F.3d 282 (7th Cir. 1997) (claims of fraud in the inducement and under Illinois Consumer Fraud and Deceptive Business Practices Act preempted by the Carmack Amendment). Thus, in practical effect, interstate moving companies today enjoy a predetermined "liability cap" on each and every household goods shipment they perform. Mayflower and their agents may commit negligence, misrepresentation, and even crimes of extortion and theft, secure in the knowledge that their penalty, should they be found out, is limited to mere contract-like damages under the Carmack Amendment. Without the possibility of tort claims against moving companies and the attendant threat of punitive damages -- and in the absence of the consumer protection initiatives once undertaken, albeit informally, by the now-defunct ICC -- it has been open season on the moving public. The sharp increase in recent years of reports of the estimate fraud known as "low-balling" and "hostage freight" extortion attests to an industry in need of policing.

Granting enforcement authority to the States and enabling state civil fraud suits against moving companies will be the single most effective action Congress can take to protect consumers -- and yet impose no additional cost upon the U.S. Department of Transportation or other federal agencies. The DOT's Federal Motor Carrier Safety Administration's first priority is ensuring the safety of the nation's highways, and its resources in this regard are already limited. However, according to the March 5, 2001 report issued by the U.S. General Accounting Office, State Attorneys General are equipped and willing to prosecute unscrupulous interstate moving companies if granted the authority. There is no reason why State Attorneys General are empowered to hold other industries -- such as the magazine sweepstakes industry -- accountable for deceptive business practices -- such as making misleading statements about "guaranteed" prize winners -- while, at the same time, State Attorneys General are prevented from protecting their constituents from interstate moving companies' misleading claims of "guaranteed" price estimates and other illusory promises of price certainty.

RICO is not preempted by the Carmack Amendment. But it is surreal that an individual consumer has to go through the expense and effort of prosecuting a RICO case against a national van line while the hands of State Attorneys General are tied and the U.S. Department of Transportation protests that it has inadequate resources to devote to consumer protection. The elimination of federal preemption will serve to prompt the household goods moving industry to abide by the laws of consumer protection, while imposing no additional strain on federal resources. The threat alone of prosecution by Attorneys General and state tort suits by defrauded consumers will greatly help to deter abuses and subject this industry to the same consequences other industries face when they prey upon consumers.

The Industry's Self-Policing Efforts Will Not Be Adequate

The industry's national trade organization, the American Moving and Storage Association (AMSA), favors the Carmack Amendment as it exists today and the *de facto* liability cap it confers upon the industry. As to protecting consumers, AMSA proposes that, in lieu of the elimination of federal preemption, Congress should permit the industry to police itself. AMSA seeks to convince the Subcommittee and the public that the industry will adequately protect consumers through efforts such as AMSA's "Certified Mover and Van Lines Program." AMSA also contends that consumers must act responsibly and choose movers who are affiliated with and agents of well-known national van lines (preferably one that is a member of AMSA). However, as my experience demonstrates, estimate fraud and hostage freight extortion are not committed by only small, "fly-by-night" companies, and choosing a "brand name" company is no guarantee of a problem-free move.

In fact, it is the larger, supposedly reputable moving companies who are most capable of perpetrating the worst abuses. Mayflower, of course, is a large corporation with ready access to lawyers and other resources to overwhelm the individual customer/victim. (The occasional

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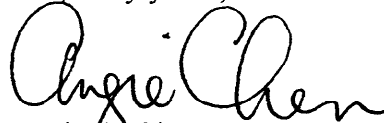
lawsuit by the especially determined customer is akin to the cost of doing business -- such cost is far outweighed by the additional monies that may be coerced from customers on any given day.) Moreover, it must be noted that several Mayflower executives are directors and officers of AMSA. AMSA's Board of Directors also includes executives from United Van Lines, Inc. and UniGroup, Inc., which is the parent company of both Mayflower and United. As you are aware, AMSA regularly lobbies members of Congress and the Department of Transportation and has provided testimony regarding consumer protection issues during a hearing held before your Subcommittee on August 5, 1998. I understand that AMSA representatives will again be providing testimony at the July 12, 2001 hearing on the topic of federal preemption of State enforcement authority and the industry's self-policing efforts.

As to those self-policing efforts, I submit that my ongoing experience vividly demonstrates that this industry does not -- and will not -- effectively police itself. Along with Mayflower executives, also on AMSA's Board of Directors is the president of Century Moving & Storage, Robert Fleming. As noted earlier, Mayflower has done no investigation into Mr. Fleming's company, even though: (i) two customers (so far) have filed lawsuits alleging that Century demanded inflated fees far in excess of the so-called "not to exceed" estimate after the customer's goods were loaded onto Mayflower's truck; and (ii) Mayflower's own tariff requires such investigation. Instead, Mayflower has gone so far as to claim that its actions are "per se legal" and are approved by the federal government. Century remains a Mayflower agent to this day. AMSA, in its public relations materials, holds itself out as a promoter of "consumer protection." Needless to say, if Mayflower's and Century's practices are indicative of AMSA's idea of "consumer protection," allowing this industry to police itself is tantamount to having the fox guard the hen house.

I wish to conclude by, again, urging you and your fellow members of Congress to abolish federal preemption -- to enact legislation to remove the obstacle to individual consumers who seek to sue interstate household moving companies under state tort law. The States must be given authority to protect its citizens from this kind of fraud, a fraud made more egregious by the fact that it occurs during one of the most vulnerable and stressful times in a person's life. The Carmack Amendment as it exists today represents a liability cap for the industry -- it is industry protection, not consumer protection. The 95-year-old Carmack Amendment must itself be amended.

Thank you for your sincere attention to this issue.

Very truly yours,



Angie A. Chen

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cc: Members of the Subcommittee on Highways and Transit
State Attorneys General
Federal Motor Carrier Safety Administration, Office of Public and Consumer Affairs
Wendy J. Weinberg, National Association of Consumer Agency Administrators
Davan Maharaj, *Los Angeles Times*
Al Guart, *New York Post*
Monta Monaco Hernon, *Washington Post*
Mark Brown, *Chicago Sun-Times*
Eric Zorn, *Chicago Tribune*
Mitch Lipka, *Ft. Lauderdale Sun-Sentinel*
Linda Kleindienst, *Ft. Lauderdale Sun-Sentinel*
Steve Overton, *Tampa Tribune*
Dana Hawkins, *U.S. News & World Report*
Arnold Diaz, ABC News
Madeleine Brand, National Public Radio
John P. Pucci, Esq.
Jane Rini

Encl.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANGIE CHEN, Plaintiff/Counter Defendant,)	
)	
v.)	Case No. 99 C 6261
)	
MAYFLOWER TRANSIT, INC., Defendant/Counter Plaintiff.)	Magistrate Judge Geraldine Soat Brown
)	
)	
)	

MEMORANDUM OPINION AND ORDER

This cause is before the Court on the Plaintiff's Motion for Leave to file Instanter Plaintiff's Second Amended Complaint. [Dkt #42.] The defendant filed its Response to Plaintiff's Motion to Amend [Dkt #38], the plaintiff filed a Reply in Support of her Motion [Dkt #40], and the Court heard oral argument. For the reasons set out below, the Plaintiff's Motion is GRANTED.

PROCEDURAL BACKGROUND AND JURISDICTION

This case arises from a 1999 contract between Plaintiff Angie Chen ("Chen") and Defendant Mayflower Transit, Inc. ("Mayflower") for the movement of Chen's furniture and household goods from Atlanta, Georgia to Chicago, Illinois. Chen alleges, *inter alia*, as follows: Mayflower, through Admiral Moving and Storage, Inc. ("Admiral"), its agent in Georgia, gave Chen a "not to exceed" estimate of \$1,741.89 for the move. Chen's property did not arrive in Chicago as scheduled, causing Chen to incur expenses. When the property did arrive, Mayflower, again through a local agent Century Moving and Storage, Inc. ("Century"), would not release Chen's goods unless she paid \$2,641.19 in cash or certified check. Because Century would not accept a credit card, Century

placed Chen's goods in storage and threatened to auction them to pay both the moving costs and storage costs, totaling \$5,122.83. Chen's property remained in storage for three months. (Proposed 2nd Am. Compl. at ¶¶ 6-57.) Chen alleges three other similar occurrences in which Mayflower and its local agents issued cost estimates to individuals—Craig Pietrowiak, Kate Rice, and Gerald and Minna Aronoff—and subsequently refused to release the individual's property unless the individual agreed to pay more than the original estimate. (*Id.* at ¶¶86-113.)

Jurisdiction exist pursuant to 28 U.S.C. §1331. Chen's breach of contract and conversion claims are brought pursuant to the Carmack Amendment (49 U.S.C. §14706), and thus, there is jurisdiction under 28 U.S.C. §1331 for those claims and the proposed RICO claim. There is supplemental jurisdiction under 28 U.S.C. §1367 for plaintiff's state law claims of negligent and intentional infliction of emotional distress.¹

Chen initially filed her Complaint on September 23, 1999, alleging breach of contract, conversion, and both intentional and negligent infliction of emotional distress. [Dkt #1.] She filed an Amended Complaint on November 23, 1999. [Dkt #10.] On January 13, 2000, Mayflower filed its Answer and Counterclaim for \$5,573.38 allegedly due and owing from Chen. [Dkt # 15.] When this case was reassigned to this Court in June 2000, expert discovery was underway and a trial date

¹ Chen also alleges diversity jurisdiction pursuant to 28 U.S.C §1332. Chen alleges, and Mayflower admits, that Chen is a citizen of Illinois. (Am. Answer and Counterclaim at ¶1.) [Dkt 35.] Chen alleges that Mayflower is a Missouri corporation with its principal place of business in Missouri. (Proposed 2nd Am. Compl. at ¶2.) Initially Mayflower admitted that allegation. (Answer and Countercl. at ¶2.) [Dkt 15.] In its Amended Answer, Mayflower answered that it is a Missouri limited liability company headquartered in Missouri. (Am. Answer and Counterclaim at ¶2.) There is no allegation as to the citizenship of the members of the limited liability company, and therefore, diversity jurisdiction is not adequately established. *See Cosgrove v. Bartolotta*, 150 F.3d 729, 731 (7th Cir. 1998): Citizenship of an LLC for purposes of diversity jurisdiction is the citizenship of its members.

had been set. [Dkt #22.] In September 2000, Mayflower was given leave to file an Amended Answer and Counterclaim [Dkt #31,32], which it filed on November 13, 2000. [Dkt # 35.]

On December 8, 2000, Chen filed the present motion for leave to file a Second Amended Complaint, in order to add proposed Count V, a claim under the Racketeer Influenced Corrupt Organizations Act (18 U.S.C. §1961, *et seq.* (RICO)). Mayflower objected to Chen's proposed amendment, and filed Defendant's Response to Plaintiff's Motion to Amend Complaint.

ANALYSIS

Federal Rule of Civil Procedure 15(a) requires that, once a responsive pleading has been filed, a party may amend its pleading only by consent of the adverse party or by leave of court, and "leave shall be freely given when justice so requires." On the other hand, leave to amend may be denied if there is "undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962).

"Futility" means that the complaint, as amended, would fail to state a claim upon which relief could be granted. In reviewing for "futility," the district court applies the same standard of legal sufficiency as applies to a Rule 12(b)(6) motion.

Glassman v. Computervision Corp., 90 F.3d 617, 623 (1st Cir. 1996)(citations omitted.) A complaint may not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of her claim which would entitle her to relief. *Conley v. Gibson*, 355 U.S. 41, 45 (1957).

Chen's proposed amendment was not dilatory and will not result in undue delay.

Mayflower first argues that Chen should not be permitted to amend because Chen's motion was filed after fact discovery had closed. However, viewed in light of the history of this case set out

above, that argument does not overcome Rule 15's directive that leave to amend should be "freely given." Chen's present motion to amend was filed a little over a year after her initial complaint, and less than a month after Mayflower filed its Amended Answer and Counterclaim. Chen argues that her counsel first learned of the facts that might give rise to a RICO claim in late October 2000 when he learned of the case *Pietrowiak v. Century Moving & Storage, Inc.*, 99 C 7419, 1999 WL 1295133 (N.D. Ill., Dec.20, 1999). In that case, Judge James Moran of this Court dismissed an action brought against Century because the proper defendant was Mayflower. According to Chen, the similarity between Pietrowiak's allegations and Chen's claims prompted counsel to investigate the possibility of a RICO claim. (Pl.'s Mot. at 3-4.) Plaintiff's present motion was filed promptly after counsel completed his investigation. (*Id.* at 4.) Mayflower argues that Chen should have learned of *Pietrowiak* earlier (Def.'s Resp. at 4), but the facts do not demonstrate Chen was dilatory in the sense of failing to plead a claim based on facts known to her.

Mayflower has not claimed that it will be prejudiced by the delay in resolution of its counterclaim if Chen's motion is granted and the trial of this case delayed. As Mayflower admits, its counterclaim is "nominal" and the amount claimed was actually reduced in its latest amendment. (Def.'s Resp. at 4.) The gravamen of Mayflower's argument is that Chen's proposed amendment may transform a relatively simple lawsuit in which Mayflower contemplated a motion for summary judgment into a more complex litigation that will require additional discovery. (Def.'s Resp. at 4-5.) However, Mayflower does not argue that Chen's RICO claim is time-barred. Thus, if Chen is not permitted to file her RICO claim in this litigation, she presumably could bring it as a separate action, which would result in more duplication of effort and expense than if the claim is brought in this proceeding. This case is distinguishable from *Sanders v. Venture Stores, Inc.*, 56 F.3d 771 (7th Cir. 1995), cited by Mayflower, where the plaintiff filed her motion to amend after the defendant filed

an ultimately-successful motion for summary judgment, and the plaintiff sought in its amendment to assert federal claims that would be time-barred but for the relation-back doctrine. 56 F.3d at 775, n.2. The Federal Rules of Civil Procedure favor resolving all of the disputes between the same parties that arise out of the same transaction in a single action where possible to bring about the “just, speedy and inexpensive determination of every action.” Fed. R. Civ. P. 1. Thus, there is no reason to deny Chen’s motion on the basis of undue prejudice or delay.

Chen’s Proposed Amendment is not Futile.

Mayflower’s second argument is that Chen has failed to plead the necessary elements of a RICO claim. The statute under which Chen seeks to bring Count V, 18 U.S.C. §1962(e), makes it unlawful for “any person employed by or associated with [an] enterprise . . . to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.” Mayflower argues that Chen’s proposed Count V does not allege “an enterprise,” a “pattern” or “racketeering activity.”

1. The enterprise requirement.

With respect to the enterprise requirement, Chen’s proposed Count V alleges, in essence, the following: Mayflower contracts with regional shipping companies that act as local disclosed agents of Mayflower and provide marketing, sales, pick-up, hauling, storage and delivery services pursuant to Mayflower’s authority. (Proposed 2nd Am. Compl. ¶59.) Mayflower itself does not provide any packing, unpacking, or hauling services directly to customers. (*Id.* at ¶60.) Mayflower requires that its local agents comply with written guidelines regarding line haul charges, discounts and other standards. (*Id.* at 59.) Mayflower’s local agents, in turn, contract with individual shippers to transport household goods across interstate lines. (*Id.* at ¶61.) The communications between and

among Mayflower, the local agents and individual shippers take place through Mayflower's central database and computer system using interstate wires. (*Id.* at ¶61.) Chen defines the "Enterprise" as Mayflower and the local disclosed agents associated together on an ongoing basis and joined in the common goal of marketing, booking, packing, hauling, storing and delivering interstate shipments of household goods. (*Id.* at ¶62.) Mayflower participates in the Enterprise by issuing guidelines, providing a means of centralized communication, maintaining a customer service line for the Enterprise's shipping customers, approving credit transactions, overseeing operations, taking in and distributing all revenues, and providing the authority (pursuant to federal regulations) under which it and the other members of the Enterprise operate. (*Id.* at 64.) The local agents participate by booking shipments for the Enterprise, issuing estimate orders, determining what discounts apply and performing services such as packing, hauling, loading and unloading. (*Id.* at 65.)

Mayflower argues that these allegations do not properly plead the enterprise requirement because Mayflower and its agents are one person, citing *Wagner v. Magellan Health Services, Inc.*, 121 F.Supp.2d 673 (N.D. Ill. 2000) for the proposition that a corporation cannot conspire with its employees or agents. (Def.'s Resp. at 9-10.) However, as Chen notes, the statement that Mayflower cites from *Wagner* was made in connection with Sherman Act claims. 121 F.Supp 2d at 673. Further, in that opinion, the District Court stated that a firm and *its employees* cannot be a RICO enterprise. 121 F. Supp. 2d at 683-84, emphasis added.²

² The issue of whether employees who associate together to commit a pattern of predicate acts in the course of their employment and on behalf of the corporation form an entity distinct enough from the corporation to be a RICO enterprise is currently before the United States Supreme Court in *Cedric Kushner Promotions Ltd. v. King*, 00-549, argued April 18, 2001. 69 LW 3679 (April 24, 2001).

At issue is whether Mayflower (the RICO "person") is distinct enough from the alleged Enterprise to meet the requirements of RICO. The case law demonstrates that the issue is more complex than suggested by Mayflower's argument. Chen's allegations meet the "distinctness requirement" that the RICO person to be an entity separate from the enterprise whose affairs it conducts. *Haroco, Inc. v. American Nat'l Bank & Trust Co.*, 747 F.2d 384, 400 (7th Cir. 1984). However, under Seventh Circuit precedent, the RICO enterprise must be more than an association to conduct the normal affairs of the RICO person. *Majchrowski v. Norwest Mortgage, Inc.*, 6 F.Supp.2d 946, 955 (N. D. Ill.1998) (collecting cases). It is not correct that a RICO enterprise cannot consist of a corporation and its disclosed agents. See *Fitzgerald v. Chrysler Corp.* 116 F.3d 225, 228 (7th Cir. 1997): "Maybe a manufacturer could use its dealers or other agents or affiliates in such a way as to bring about the sort of abuse at which RICO is aimed, in which event it might be possible to characterize the assemblage as a RICO enterprise." However, distinctness is not found where a corporation deals with its agents in the ordinary way so that the agents' role in the corporation's illegal acts is entirely incidental. (*Id.*) The focus is whether the person and the other alleged participants in the enterprise are legally distinct entities and each played a distinct role within the purported scheme. *Majchrowski*, 6 F. Supp. 2d at 956-58.

Here, the alleged participants in the Enterprise are separate corporate entities, and Chen alleges distinct roles in the RICO Enterprise for the local agents and for Mayflower. The local agents conduct activities, such as hauling and packing, that Mayflower does not do. Under the scheme alleged by Chen, the local agents' refusal to relinquish the victim's goods unless the allegedly improper price is paid is critical to the success of the scheme. Mayflower allegedly provides the interstate authority and the communication links (including computer system) via interstate wire, and receives and disburses the receipts from the Enterprise to the other participants

in the Enterprise. Significantly, Chen's RICO claim can fairly be read to allege that the wrongful activities that the agents perform for the Enterprise are beyond the activities they undertake as agents for Mayflower: The activity of the Enterprise is the extortion and sharing of *improper additional* amounts beyond the initial estimates that would be the proper contract compensation for Mayflower and its agents. Chen has sufficiently pleaded the enterprise requirement of a RICO claim.

2. Racketeering activity.

Mayflower also argues that Chen has not pleaded illegal activities. Chen's proposed Count V alleges that the Enterprise engaged in mail and wire fraud (in violation of 18 U.S.C. §1341 and 1343) by way of false promises and misrepresentations that the cost of her move was guaranteed not to exceed \$1741.89; theft from interstate shipment (in violation of 18 U.S.C. §659) by taking Chen's goods by fraud or deception after she had placed them in possession of a common carrier traveling in interstate commerce, with intent to convert the goods to the Enterprise members' use; and extortion (in violation of 18 U.S.C. §1951) by use of threatened force against her property in an effort to obtain more than the estimated cost. (Proposed 2nd Am. Compl. at ¶¶ 67-82.)

Mayflower claims that Chen fails to plead mail or wire fraud because she has not pleaded a misrepresentation of fact. (Def.'s Resp. at 6.) However, Mayflower also cites *Richards v. Combined Insurance Co.*, 55 F.3d 247, 251-52 (7th Cir. 1995), in which the Seventh Circuit stated that mail fraud does not encompass all of the strict requirements of common law fraud, and, thus, false pretenses and promises as well as misrepresentations of present fact are within the scope of RICO liability for mail or wire fraud. Chen pleads with specificity that Admiral, Mayflower's local agent in Georgia, represented that the cost of the move was "guaranteed not to exceed" \$1,741 and that Chen could pay with a credit card, and also pleads that Mayflower and its agents Century and

Admiral “had a specific intent to defraud Ms. Chen.” (Proposed 2nd Am. Compl. at ¶¶9, 12 and ¶71.) Chen includes similar detailed allegations with respect the other claimed predicate acts, the alleged wrongful activities toward Craig Pietrowiak, Kate Rice, and Gerald and Minna Aronoff. (*Id.* at ¶¶86-112.)

The fraud allegations in this case are similar to those in *Corley v. Rosewood Care Center, Inc. of Peoria*, 142 F.3d 1041 (7th Cir. 1998), in which the Seventh Circuit reversed summary judgment entered against the plaintiffs. The plaintiffs alleged that the defendants engaged in a “bait and switch” scheme in which the defendants made false promises about the quality of care that the residents of a nursing home would receive and a false promise that a resident would be permitted to stay in the Peoria facility as a Medicaid patient even if she were to exhaust her private funds. The Seventh Circuit agreed with the district court that the complaint adequately alleged a pattern of racketeering activity. 142 F.3d at 1050. Likewise, Chen’s allegations of a “bait and switch” scheme of false promises upon which Chen allegedly relied sufficiently allege mail and wire fraud.

Mayflower also argues that the actions alleged are not criminal offenses, but cites no authority to support its position that Chen’s allegations of extortion and theft from interstate shipment are inadequate as a pleading matter. (Def.’s Resp. at 7.)³

³ Mayflower refers to allegations of “robbery” (Def’t’s Resp. at 7), but Chen’s proposed 2nd Amended Complaint does not attempt to allege robbery. Theft from interstate shipment, which Chen does allege, does not require proof of actual or threatened force, but rather includes anyone who

embezzles, steals, or unlawfully takes, carries away, or conceals, or by fraud or deceptions obtains from any. . . motortruck, or other vehicle. . . with intent to convert to his own use any goods or chattels moving as or which are a part of or which constitute an interstate or foreign shipment of freight, express or other property. . .

Finally, Mayflower argues that the acts that Chen alleges are illegal are, in fact, authorized by Mayflower's tariff. (Def.'s Resp. at 7-9). In support of that argument, Mayflower attaches certain exhibits to its Response, including a copy of its tariff, and urges the Court to "go beyond the proposed pleading and look at the evidence." (Def't's Resp. at 7, n.3.) However, there is no express authority in Rule 15 for converting a *plaintiff's* motion for leave to amend under Rule 15 into a *defendant's* motion for summary judgment under Rule 56. Cf. Fed. R. Civ. P. 12(b). Following Mayflower's suggestion would also eliminate the useful format for summary judgment motions mandated by Local Rule 56.1. Thus, this Court excludes from consideration on this motion the exhibits attached to Defendant's Response. For the same reason, the Court disregards exhibit B (certain Superseding Indictments) attached to the Plaintiff's Reply.

3. A pattern.

Mayflower argues that no "pattern and practice" (sic) is alleged in Chen's proposed Count V. (Def't's Resp. at 10.) However, *Corley*, 142 F.3d 1041, demonstrates that Chen has sufficiently alleged a pattern of racketeering activity. The pattern requirement means that

in addition to at least two predicate acts, a RICO plaintiff must show 'that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.'

Corley, 142 F.3d at 1048, quoting *H. J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989).

The predicate acts here are related, in that they have the same or similar purposes, results, participants, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents. The participants are Mayflower and its local agents. The purpose and result is to obtain monies in excess of the original estimates by holding the individual's property until the individual pays the additional amounts. The method is to obtain the

individual's property and subsequently demand additional amounts for claimed additional services, refusing to release the property until the amounts are paid.

The final element is continuity, the threat of continued or continuing criminal activity.

Continuity, the Court observed, is both a closed- and open-ended concept, in that it refers "either to a closed period of repeated conduct or to past conduct that by its nature projects into the future with a threat of repetition."

Corley, 142 F.3d at 1048, quoting *H. J. Inc.*, 492 U.S. at 241. Closed-end continuity can be proven by a series of related predicates extending over a substantial period of time, usually not merely a few weeks or months. *Corley*, 142 F.3d at 1048. Open-end continuity may involve predicate acts occurring over a short period of time so long as there is a threat that the conduct will occur in the future. (*Id.*) Here, Chen's allegations arguably fit both types. She alleges acts that occurred in 1994 (Rice and Aronoff) and 1999 (Chen and Pietrowiak) and also alleges that the members of the Enterprise associate "on an ongoing basis." (Proposed 2nd Am. Compl. at ¶ 62.) She further alleges that, on information and belief, the Enterprise used mail or interstate wire to further additional schemes to induce other individuals to contract with the participants in the Enterprise for moving services and to surprise these individuals with additional charges after the individuals have surrendered control over their property to the participants in the Enterprise. (*Id.* at ¶113.) Mayflower dismisses this as "a thinly veiled pitch for more discovery," (Def.'s Resp. at 13), however, the similarities between Chen's pleading and that of the plaintiffs in *Corley* are striking, and the Seventh Circuit's conclusion in *Corley* compels the result here:

Corley's complaint identifies certain other Rosewood residents to whom various misrepresentations were communicated, and with respect to the identified residents, he details the circumstances of the alleged frauds with sufficient particularity. To the extent the complaint makes allegations relating to other classes of unidentified Rosewood residents, however, we believe that Rule 9(b)'s particularity requirement must be relaxed if, at the time the complaint was filed, Corley had been denied access in discovery to information that would identify those residents. Predicate acts of

rackeering relating to those residents may be pled more generally, as Corley has done here by referencing his own experiences with Rosewood in contracting for the car of his mother and alleging in some detail that other residents and their relatives also were victimized by the identical scheme. In sum, then, we agree with the district court that Corley's fourth amended complaint satisfies the particularity requirements of Rule 9(b) and sufficiently alleges a pattern of racketeering activity. It was therefore not subject to dismissal for failure to state a claim.

Corley, 142 F.3d at 1051. Chen has adequately alleged a RICO claim, and is entitled to move forward with discovery on it.

Chen has adequately pleaded a claim under Section 1962(d).

Mayflower's arguments against Chen's Section 1962(d) conspiracy claim merely reiterate Mayflower's previous arguments that Chen has not stated a substantively sufficient RICO claim, and that Mayflower cannot conspire with its agents. As discussed above, Chen's allegations sufficiently plead a RICO claim. Mayflower's second argument consists of the single sentence that "Mayflower and its agents [are] one person in the eyes of the law," referring back to its single citation of the *Wagner* case. (Def.'s Response at 15.) Again, Mayflower's argument is far too simplistic. The intracorporate conspiracy doctrine, which provides that a generally corporation cannot conspire with its officers or employees acting within the scope of their employment, or with its unincorporated divisions or wholly owned subsidiaries (*Copperweld Corporation v. Independence Tube Corp.*, 467 U.S. 752, 769-70 (1984) (alleged conspiracy to violate Sherman Act)) is itself, as the Seventh Circuit has noted, subject to a number of exceptions. See *Hartman v. Board of Trustees of Community College*, 4 F. 3d 465, 470 (7th Cir. 1993); *Payton v. Rush-Presbyterian-St. Luke's Medical Center*, 184 F.3d 623, 632-33 (7th Cir. 1999) (applying doctrine to in claims pursuant to 42 U.S.C. §1985).⁴


⁴ The Seventh Circuit, citing *Copperweld*, has also noted "the frequent asymmetry in the legal treatment of integrated and nonintegrated firms: under antitrust conspiracy law, for example, a firm can conspire with its dealers but it cannot conspire with its subsidiaries or employees."

In this case, Chen's RICO claim can be fairly read to plead that Century and Admiral, which are separately-owned corporate entities that are engaged from time to time to act for some purposes as local agents for Mayflower, conspired with Mayflower and other local agents to commit illegal acts to obtain additional monies from customers for their own benefit and for the benefit of the Enterprise, not solely for the benefit of the principal Mayflower. Mayflower has failed to demonstrate that there are no set of facts that Chen can prove that would enable her to prove a conspiracy among those entities.

CONCLUSION

For the foregoing reason, plaintiff's Motion for Leave to File Instant Plaintiff's Second Amended Complaint is GRANTED.

IT IS SO ORDERED.


GERALDINE SOAT BROWN
United States Magistrate Judge

DATED: May 25, 2001

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

ANGIE CHEN,

Plaintiff,

vs.

MAYFLOWER TRANSIT, INC.,

Defendant.

No. 99 C 6261

Magistrate Judge Brown

FILED

MAY 29 2001

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

DOCKETED

MAY 29 2001

SECOND AMENDED COMPLAINT

Plaintiff, Angie Chen, by and through her attorneys, Sachnoff & Weaver, Ltd., and for her Second Amended Complaint against Defendant Mayflower Transit, Inc., alleges as follows:

PARTIES

1. Plaintiff is a U.S. citizen and resides in Chicago, Illinois.
2. Defendant Mayflower Transit, Inc. ("Mayflower") is a corporation incorporated under the laws of the State of Missouri and is a motor carrier engaged in the business of transporting household goods. Mayflower has its headquarters and principal place of business in Fenton, Missouri and transacts business in Cook County, Illinois.

JURISDICTION

3. Federal question jurisdiction exists in this Court for Count I - Breach Of Contract (Bill Of Lading) and for Count II - Conversion, pursuant to 28 U.S.C. §1331, since Plaintiff's claim arises in part under 49 U.S.C §14706 (the Carmack Amendment). Jurisdiction exists for Plaintiff's claims for negligent and intentional infliction of emotional distress under the doctrine of pendant jurisdiction. Federal question jurisdiction exists for Plaintiff's Count V - Racketeer

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Influenced Corrupt Organizations Act, since Plaintiff's claim arises under 18 U.S.C. §1961, *et seq.*

4. Jurisdiction for all claims also exists pursuant to 28 U.S.C. § 1332, since diversity exists between Plaintiff and Defendant, and the total damages sought, exceeds \$75,000.

VENUE

5. Many of the events giving rise to this claim occurred, and the *res* which is the subject of this Complaint is located, within this District; thus, venue in this Court is proper pursuant to 28 U.S.C. §1391(a) and (b)(2).

FACTUAL BACKGROUND TO ALL COUNTS

6. Plaintiff is a former resident of Atlanta, Georgia. In May 1999, she began making arrangements to move to Chicago, Illinois. In connection with this move, Plaintiff contacted Admiral Moving and Storage, Inc. ("Admiral"), a disclosed agent of Mayflower, to discuss using Admiral's and Mayflower's moving services.

7. Admiral is a corporation incorporated under the laws of the State of Georgia and is a motor carrier engaged in the business of transporting household goods. Admiral's headquarters and principal place of business are located in Atlanta, Georgia. At all times described herein, Admiral's acts were related to the performance of household goods transportation services and were within the actual or apparent authority conveyed upon it by Mayflower.

8. On June 4, 1999, John Berkes, an employee of Admiral acting within the scope of his apparent authority, arrived at Plaintiff's residence in Atlanta for the purpose of giving Plaintiff an estimate of Mayflower's fee to move her possessions to Chicago.

9. Berkes represented to Plaintiff that Mayflower's fee for the move was "Guaranteed not to exceed" \$1,741.89. This price guarantee is documented in the "Estimate/Order for Service,"

which was signed by both Plaintiff and Berkes on June 4, 1999. (See Exhibit "A" attached to original Complaint).

10. Berkes also represented to Plaintiff that there was a possibility her final charge for the move would actually be less than \$1,741.89, if the actual weight of her shipment was less than the estimated weight.

11. The "Estimate/Order for Service" reflected that the agreed pick-up dates were June 10 through June 14, 1999, and the agreed delivery dates were June 15 through June 21, 1999.

12. On or about June 8, 1999, Plaintiff received a letter from "Admiral-Mayflower" sent through the U.S. mail and confirming the pick-up and delivery dates as indicated in the Estimate/Order for Service. This letter also stated, in pertinent part: "payment is due at the time of delivery and can be made in cash, certified check or money order, or a major credit card, or direct billing to company with approved letter of authorization and approved credit check." (Emphasis added.) (See Exhibit "B" attached to original Complaint.)

13. Relying upon the Admiral-Mayflower letter, Plaintiff planned to use her credit card to cover her moving expenses.

14. At no time between June 4, 1999 and June 30, 1999, did anyone from Admiral notify Plaintiff that her major credit card would not be an acceptable method of payment.

15. Also on or about June 8, 1999, along with the letter described above, Plaintiff received a typewritten copy of the "Estimate/Order for Service" from "Admiral-Mayflower" sent through the U.S. mail and purporting to be identical to the handwritten "Estimate/Order for Service" she had received from John Berkes on June 4, 1999. Sometime after Admiral's agents took possession of her goods, Plaintiff signed the typewritten "Estimate/Order for Service," believing it to be identical to the handwritten version she had reviewed with Mr. Berkes.

16. On June 10, 1999, two employees from Admiral loaded Plaintiff's furniture and other household goods, including Plaintiff's study materials necessary for her preparation for the Illinois bar examination, onto its truck. After the truck was loaded, these employees gave Plaintiff a Bill of Lading.

17. The Bill of Lading indicated that the \$1,741.89 was a "binding estimate." The Bill of Lading, like the Estimate/Order for Service, also indicated that the agreed pick-up dates were June 10 through June 14, 1999, and that the agreed delivery dates were June 15 through June 21, 1999. (See Exhibit "C" attached to original Complaint).

18. Admiral transported Plaintiff's furniture and household goods to Admiral's local warehouse, where Plaintiff's property was to be picked up and transported to Chicago by a driver employed by Century Moving and Storage, Inc. ("Century"), a disclosed agent of Mayflower.

19. Century is a corporation incorporated under the laws of the State of Illinois and is a motor carrier engaged in the business of transporting household goods. Century's headquarters and principal place of business are located in Lombard, Illinois. At all times described herein, Century's acts were related to the performance of household goods transportation services and were within the actual or apparent authority conveyed upon it by Mayflower.

20. Plaintiff arrived at her new residence in Chicago on June 11, 1999.

21. Between June 11 and June 21, 1999, Plaintiff made several calls from Chicago, Illinois to Admiral in Atlanta, Georgia and to Mayflower's Customer Service "1-800" number in Fenton, Missouri to inquire about the status of her delivery. She received assurances from both Admiral and Mayflower that her property would be delivered by June 21, 1999.

22. On June 21, 1999, when Plaintiff's furniture and household goods had not been delivered, Plaintiff again placed a telephone call from Chicago to Mayflower's Customer Service

number in Missouri. Mayflower's customer service representative, Corrine Swenson, told Plaintiff that her shipment would be late, but could not provide Plaintiff with a new delivery date. Swenson explained that she could not provide Plaintiff with a new delivery date because the driver responsible for transporting Plaintiff's property to Chicago was unwilling to provide a new delivery date until June 23, 1999.

23. Jim Macak, the driver assigned to transport Plaintiff's property to Chicago was an employee of Century Moving and Storage, Inc.

24. On June 23, 1999, Plaintiff again placed a telephone call from Chicago to Mayflower's Customer Service number and was informed by Swenson that her new delivery date was June 30, 1999.

25. By June 30, 1999, Plaintiff had incurred more than \$1,100 in hotel costs and meals as a result of Mayflower's and/or its agents' failure to deliver her property by the agreed delivery date, June 21, 1999.

26. Mayflower has a delay compensation policy, which provides for compensation to a customer of 100% of reasonable hotel costs, as well as 50% of food costs, not including alcohol or tobacco, incurred by the customer as a result of Mayflower's or its agents' untimely delivery of the customer's shipment.

27. The Mayflower agents responsible for the delay in the delivery of Plaintiff's property were Century and/or Admiral.

28. On June 21, 1999, Swenson told Plaintiff by telephone that she could avail herself of Mayflower's delay compensation policy.

29. On June 28, 1999, Plaintiff placed a telephone call to Mayflower's Customer Service number and spoke with a Customer Service Representative. Plaintiff requested a telephone call

from the driver who was transporting her property to Chicago. However, neither the driver nor anyone from Century or Mayflower called Plaintiff on June 28 or June 29, 1999.

30. At approximately 9:00 a.m. on June 30, 1999, Plaintiff again placed a telephone call to Mayflower's Customer Service number and spoke with a Customer Service Representative named Matt, at extension 4036. Once again, Plaintiff requested a telephone call from the driver transporting her property.

31. Shortly thereafter, Ann Vineyard, an employee and agent of Century acting within the scope of her apparent authority and authorized by Century to contact shippers, called Plaintiff by telephone. Ms. Vineyard asked whether Plaintiff had payment ready in the full amount of \$1,741.89 in cash or certified funds. Plaintiff replied that she would be paying by credit card.

32. During this call, Ms. Vineyard stated that she could not accept a credit card and insisted that cash or certified funds must be tendered to the driver before she would instruct the driver to unload the truck. Plaintiff indicated that she would have difficulty raising such a large sum of cash on such short notice, but nevertheless indicated that she would attempt to raise the cash before the driver arrived.

33. Prior to Ms. Vineyard's telephone call on June 30, 1999, Plaintiff was not informed by Mayflower or any of its agents that a credit card would not be accepted for payment.

34. Ms. Vineyard knew that Plaintiff had been without her furniture and household goods since June 10, 1999. She also knew as of June 30, 1999, that Century was already nine (9) days late with Plaintiff's shipment. She further knew that Plaintiff had incurred more than \$1,100 in hotel costs due to Century's delay in making the delivery. She also was informed by Plaintiff that included in the shipment were Plaintiff's study materials necessary for her preparation for the Illinois bar examination in July, 1999.

35. Ms. Vineyard either knew or reasonably should have known that in the event Plaintiff submitted a claim for delay compensation to Mayflower, Century would be responsible for all or most of the funds required to reimburse Plaintiff for her hotel costs.

36. Century's driver arrived at Plaintiff's residence on June 30, 1999 at about 11:00 a.m. Shortly thereafter, Ms. Vineyard informed Plaintiff over the telephone that Plaintiff was required to tender the full amount of \$2,556.69 in cash or certified funds before the driver would unload the truck.

37. This \$2,556.69 figure is nearly fifty percent above the \$1,741.89 "guaranteed not to exceed" estimate which Plaintiff received from Admiral on June 4, 1999.

38. Ms. Vineyard claimed that the additional \$814.80 was to cover "additional services" such as carrying Plaintiff's goods a distance of "more than four blocks" between the truck and Plaintiff's residence.

39. Notwithstanding Ms. Vineyard's contentions, the delivery truck was parked at the northwest corner of Broadway and Melrose Streets, which is less than one (1) block away from Plaintiff's residence at 511 West Melrose Street.

40. Ms. Vineyard also claimed that the unloading would take "eight to ten hours," and that after 4:00 p.m. Plaintiff would be charged for overtime.

41. Notwithstanding Ms. Vineyard's contentions, at the time that Plaintiff's property was picked up in Atlanta, Georgia on June 10, 1999, it was loaded in less than four (4) hours.

42. Ms. Vineyard threatened Plaintiff over the telephone that, if she did not immediately come up with \$2,556.69 in cash or certified funds, and sign a document stating that she had agreed to pay for the additional services, her property would be put into storage and that Plaintiff would incur thousands of dollars more in various fees, such as warehouse handling, storage, and

re-delivery fees. Ms. Vineyard also warned Plaintiff that if Century did not receive payment, Century would dispose of Plaintiff's property by auction in 30 days.

43. Although Ms. Vineyard demanded a fee in great excess of Plaintiff's "guaranteed" and "binding" estimate, at no time did Plaintiff refuse to make payment for the return of her property. Plaintiff repeatedly offered to make payment by major credit card.

44. Plaintiff pleaded with Ms. Vineyard to accept a major credit card, in accordance with Admiral's letter, but Ms. Vineyard repeatedly refused to allow Plaintiff to pay by credit card.

45. Ms. Vineyard also failed to offer an explanation as to why Century failed to honor Admiral's letter which established a "major credit card" as an acceptable method of payment.

46. At no time did Ms. Vineyard or any other agent of Mayflower attempt to process Plaintiff's credit card to cover Mayflower's delivery.

47. Also on June 30, 1999, Plaintiff placed another telephone call to Mayflower's Customer Service Line and spoke with Corrine Swenson. Plaintiff told Ms. Swenson that Century's driver was refusing to unload her belongings until payment was made in cash and again offered to pay by credit card. Ms. Swenson telephoned Admiral to inquire if they would process the Plaintiff's credit card; Admiral refused. Ms. Swenson then told Plaintiff that she would have to come up with the entire payment by cash, cashier's check, or money order; or the driver would not unload her belongings.

48. While Plaintiff frantically attempted to raise thousands of dollars in cash, Ms. Vineyard assessed against Plaintiff an additional \$84.50 for the driver's waiting time, bringing Mayflower's total demand for delivery to \$2,641.19.

49. At about 2:30 p.m., when Plaintiff was unable to tender \$2641.19 in cash or certified funds, Ms. Vineyard sent the driver away with Plaintiff's property.

50. Ms. Vineyard then informed Plaintiff that Century was putting her property in storage at Century's facility in Lombard, Illinois, and that Plaintiff would immediately begin to incur thousands of dollars in storage, warehouse handling, and re-delivery fees.

51. Ms. Vineyard offered Plaintiff a promise to not auction Plaintiff's property in 30 days if Plaintiff paid her \$2,481.64 for storage costs. According to Ms. Vineyard she would accept this \$2,481.64 by credit card; however, Plaintiff would still be required to tender over \$2,500 in cash or certified funds to cover the moving costs. Plaintiff declined this offer.

52. Ms. Vineyard then told Plaintiff that she would need to tender more than \$5,122.83 in order to recover her property.

53. Finally, Ms. Vineyard claimed that the owner of Century was going to "give [Plaintiff] a break," and make delivery of Plaintiff's property on July 6, 1999, on the condition that on July 1, 1999, the very next day, Plaintiff appear at Century's office and tender \$3,981.89 (more than double the Binding Estimate) in cash or certified funds to Ms. Vineyard.

54. At all relevant times, Ms. Vineyard was acting as an agent of both Century and Mayflower, and within the apparent scope of the authority conveyed upon her by Century and Mayflower.

55. Plaintiff demanded the return of her property; but Mayflower has failed and refused to return Plaintiff's property until the initiation of this action.

56. Mayflower unlawfully possessed Plaintiff's property and refused to make delivery of Plaintiff's property for the "guaranteed not to exceed" Estimate amount of \$1,741.89. Mayflower also assessed fees for storage of Plaintiff's goods.

57. Because of Mayflower's actions and the actions of its agents, Plaintiff has incurred specific and general damages, including deprivation for more than three months of virtually all of her material belongings, great inconvenience, severe emotional distress, and mental anguish.

FACTUAL BACKGROUND TO COUNT V (RICO)

The Enterprise

58. Mayflower is authorized by the federal government to provide interstate shipping of household goods pursuant to the terms of a published federal tariff known as the Household Goods Carrier Bureau's Tariff.

59. Mayflower contracts with regional shipping companies that act as local disclosed agents of Mayflower and provide marketing, sales, pick-up, hauling, storage, and delivery services pursuant to Mayflower's authority. Mayflower requires that its local agents comply with written guidelines regarding line haul charges, discounts, additional service charges, and transit and delivery standards. Because Mayflower's local agents are authorized to operate in interstate shipping only pursuant to the authority of Mayflower's tariff, they must abide by the rules established both by the tariff and by Mayflower.

60. Mayflower does not provide any packing and unpacking or hauling services directly to customers.

61. Mayflower's local agents, in turn, contract with individual shippers to transport household goods across interstate lines. If the local agent who books the order is not able or does not wish to haul the goods itself, it transports them to a local warehouse and places the order into Mayflower's central database for another local agent to pick up for hauling and/or delivery to the final destination. All communications between local agents regarding booking, hauling, storage,

and delivery of goods are overseen by Mayflower and take place through Mayflower's central database and computer system using interstate wires.

62. Mayflower, Century, Admiral, Union Van Lines, Inc. (a disclosed agent of Mayflower operating in Illinois), W.J. Donovan, Inc. (a disclosed agent of Mayflower operating in Massachusetts), and other disclosed agents of Mayflower, associate together on an ongoing basis and are joined in the common goal of marketing, booking, packing, hauling, storing, and delivering interstate shipments of household goods (the "Enterprise").

63. Fees for moving services conducted by the Enterprise are taken in by Mayflower and distributed among various members of the Enterprise.

64. Mayflower participates in and/or has agreed to facilitate the operation and management of the Enterprise by issuing guidelines on pricing, discounts, and standards for transit and delivery; providing a means of centralized communication between the other members of the Enterprise (i.e., the disclosed local agents); maintaining a customer service line for the Enterprise's interstate shipping customers; approving credit transactions; overseeing and directing operations; taking in and distributing all revenues; and providing the authority under which it and the other members of the Enterprise operate.

65. Admiral and Century each participate in and/or have agreed to facilitate the operation and management of the Enterprise by booking shipments for the Enterprise, issuing estimate orders for service, determining what discounts to apply to each shipper's order, and performing services including but not limited to packing, hauling, loading and unloading, storing, and other services comprising the operations of the Enterprise.

66. The Enterprise engages in and affects interstate commerce by providing interstate shipping services of household goods to individual and institutional shippers, at times contracting to provide as many as 400 interstate moves or more per day.

Racketeering Activity Relating to the Plaintiff

67. The Enterprise has engaged in predicate acts of mail fraud (in violation of 18 U.S.C. § 1341), wire fraud (in violation of 18 U.S.C. § 1343), theft from an interstate shipment (in violation of 18 U.S.C. § 659), and extortion/robbery (in violation of 18 U.S.C. § 1951).

68. Plaintiff has suffered loss of property and other incidental and consequential damages including, but not limited to, loss of income by reason of the Enterprise's racketeering activity.

Mail and Wire Fraud

69. As more fully described in paragraphs 6 through 57, Admiral, Century, and/or Mayflower executed a scheme to induce Plaintiff to enter into a contract for interstate shipping services by falsely promising and misrepresenting that the cost of her move was "guaranteed not to exceed" the \$1,741.89 specified on the Estimate/Order for Service.

70. In furtherance of their scheme, Admiral, Century, and Mayflower made use of the U.S. mail and interstate wires as more fully described in paragraphs 12, 15, 21, 22, 24, 28, 29, 30, 47, and 61.

71. As demonstrated by their conduct, Admiral, Century, and Mayflower had a specific intent to defraud Ms. Chen either by devising or participating in the scheme to induce her to enter into a contract for shipping services by promising that the cost of her move was "guaranteed not to exceed" the estimate, misrepresenting that she would be permitted to pay by credit card, taking possession of her household goods, and then refusing to release them without payment of more than twice the original estimate in cash.

72. As a result of the Enterprise's mail and wire fraud, Ms. Chen suffered loss of property and other incidental and consequential damages including, but not limited to, loss of income.

Theft From Interstate Shipment

73. Plaintiff was willing and able to pay the charges for her move by major credit card on June 30, 1999.

74. Mayflower and other members of the Enterprise, wrongfully and without justification or reason, refused to accept payment by major credit card.

75. Mayflower and/or other members of the Enterprise refused to deliver and relinquish possession of Plaintiff's property on the pretext that Plaintiff could not make proper payment.

76. Mayflower and/or other members of the Enterprise unlawfully took, carried away, and/or obtained Plaintiff's goods by fraud or deception with the intent to convert such goods to their own use.

77. Plaintiff's goods were unlawfully taken by Mayflower and/or other members of the Enterprise from Century's moving truck after having been placed in possession of a common carrier moving in interstate commerce.

Extortion/Robbery

78. Mayflower and/or Admiral induced the Plaintiff to contract with the Enterprise for moving services by giving her a "guaranteed not to exceed" estimate for the cost of her move.

79. After loading her household goods onto their trucks, Mayflower and/or Admiral gave the Plaintiff a bill of lading that did not contain the "guaranteed not to exceed" term from the original Estimate/Order for Service.

80. Upon arriving, 9 days late, with her goods in Chicago, an agent of Mayflower and/or Century, acting within the apparent scope of her authority, told Plaintiff that Century and/or

Mayflower would not unload Plaintiff's goods and that they would auction off her property within 30 days if she did not pay more than twice the "guaranteed not to exceed" estimate.

81. Notwithstanding the fact that Plaintiff attempted to pay the amounts demanded by major credit card, Mayflower and/or Century drove off without unloading Plaintiff's goods and retained them for more than three months.

82. The acts of Mayflower and other members of the Enterprise affected or attempted to affect interstate commerce by extorting from the Plaintiff more than twice the "guaranteed not to exceed" cost of her move from Atlanta, Georgia to Chicago, Illinois through wrongful use of threatened force against her property.

Pattern of Racketeering Activity

83. Predicate acts such as mail and wire fraud are a regular method through which the Enterprise operates.

84. The members of the Enterprise used "not to exceed" estimates and other forms of misrepresentation for scores of years to induce customer/victims into hiring members of the Enterprise and surrendering to them possession of their goods for shipment. Then the Enterprise springs additional charges upon the customer/victim, exceeding the "not to exceed" estimates, and often refusing to deliver or release their goods until payment has been made. In addition, Mayflower claims that such misleading practices have been approved by the federal government.

85. The members of the Enterprise have knowledge of the use of "not to exceed" estimates and other tactics that are used to induce customer/victims into signing contracts with a member of the Enterprise for interstate shipping and each has agreed that someone within the Enterprise would commit at least two predicate acts to accomplish the goals of the Enterprise.

Craig J. Pietrowiak

86. On or about January 4, 1999, Century contracted with Craig J. Pietrowiak, then a resident of the state of Illinois, to transport his household goods from Vernon Hills, Illinois to Burbank, California. Several days prior to the scheduled move, Mr. Pietrowiak contacted Chris Dunne, an agent of Century acting within the scope of his apparent authority, by telephone to inquire about the cost of the move. Mr. Pietrowiak had already received an estimate for his move from another moving company, and Mr. Dunne told him that, because he already had an estimate, Mr. Dunne did not need to see his belongings in order to give him Century/Mayflower's estimated cost.

87. Shortly before January 4, 1999, Mr. Dunne sent Mr. Pietrowiak via the U.S. mail a "not to exceed" estimate of \$1685.00 for the cost of his move. Mr. Dunne told Mr. Pietrowiak "off the record" that there was no need to purchase insurance because it was a waste of money. Mr. Dunne knew and intended that Mr. Pietrowiak would rely on his statements in deciding which moving company to hire.

88. Mr. Pietrowiak signed the estimate and returned it to Century through the U.S. mail.

89. On or about January 4, 1999, Century's agents loaded Mr. Pietrowiak's goods onto a truck and drove off. That same day Mr. Pietrowiak began his own trip to California, planning to meet Century's driver, or another member of the Enterprise, in California along with his possessions.

90. On information and belief, on or about January 5, 1999, while on the road from Illinois to California, Mr. Pietrowiak received another telephone call from Mr. Dunne, who told him that the cost of his move would be \$2609.00 – exceeding his "not to exceed" estimate by more than half.

91. Mr. Pietrowiak agreed to pay the increased cost of the move so that Century or another member of the Enterprise in Los Angeles would deliver his goods. Upon inspection of his goods, however, Mr. Pietrowiak discovered that many of his belongings were missing. He filed a claim with Century and Mayflower, but was told that Century and Mayflower were not liable because, as Mr. Dunne had suggested, Mr. Pietrowiak had not purchased insurance.

92. Century and Mayflower, with specific intent to defraud, used the U.S. mail and interstate wires in furtherance of its scheme to fraudulently induce Mr. Pietrowiak with a phony "not to exceed" estimate into contracting with it for interstate shipping services and not purchasing appropriate insurance to cover the value of his belongings.

Kate Rice

93. On or about June 13, 1994, Kate Rice, then a resident of the state of Illinois, contacted Union Van Lines Inc., d/b/a Union-Mayflower, an Illinois corporation and member of the Enterprise ("Union"), to inquire about the cost of moving her possessions from Chicago to New York City, New York. Ms. Rice spoke with Allan H. Levy, a sales consultant and agent of Union acting within the scope of his apparent authority.

94. Over the telephone, Mr. Levy gave Ms. Rice an estimate that her moving costs would be between \$1,500 and \$1,800 less a 35% discount. Mr. Levy did not inform Ms. Rice that there would be any additional charges. Based upon Mr. Levy's representations and cost estimate, Ms. Rice entered into a contract with Union and Mayflower for the interstate shipment of her goods.

95. On or about June 23, 1994, Union picked up Ms. Rice's goods.

96. On or about June 24, 1994, Mr. Levy again telephoned Ms. Rice and informed her that the cost of her move would be \$5,146.39 – more than three times the estimate he had

originally given her. Ms. Rice was told that Union would not deliver or release her goods without payment in full of the increased price.

97. Mr. Levy on behalf of the Enterprise, intentionally grossly underestimated the cost of Ms. Rice's move in a scheme to induce her to enter into a contract and surrender her goods into Union's possession. Union and Mayflower then refused to release her goods until she agreed to pay more than three times his original estimate. Mr. Levy, Union and Mayflower used interstate wires as described above in furtherance of this scheme.

Dr. and Mrs. Gerald and Minna Aronoff

98. In October 1994, Dr. and Mrs. Gerald and Minna Aronoff, then residents of Massachusetts, contacted W.J. Donovan, Inc. ("Donovan"), a local moving company and member of the Enterprise, to obtain an estimate for moving services to transport their household goods from Massachusetts to Charlotte, North Carolina.

99. On or about October 18, 1994, Mr. Embree, an agent of Donovan acting within the scope of his apparent authority, provided the Aronoffs with an estimate of the cost of the move including insurance, hauling, packing, and unpacking.

100. Dr. Aronoff made particular inquiry about the timing of the move because he was planning to open his new medical practice in North Carolina on October 24, 1994. Embree represented to Dr. Aronoff that Donovan and Mayflower would use the largest sized trucks that would be sufficient to carry all the goods from his home, office, and storage facility in one truck, that the companies were highly skilled at coordinating moves, and that because of their equipment and superior services they would be able to complete the move by October 22, 1994. Relying on Embree's representations regarding the timeliness of his delivery, the Aronoffs agreed to engage Mayflower and Donovan for the move.

101. After making these representations, Embree sent the Aronoffs a written Estimate/Order Form and a Bill of Lading for the move on or about October 18, 1994, on information and belief, through the U.S Mail.

102. Contrary to Donovan's and Mayflowers' representations, the move was not completed in a timely fashion and was not completed in one haul. Rather, Donovan arrived at the Aronoff's home on October 20, 1994 with a truck that was too small to hold all their possessions, loaded up a portion of the Aronoffs' possessions from their home and Dr. Aronoff's office, but neglected to load the possessions from their storage facility.

103. On or about October 21, 1994, after Donovan took possession of the Aronoffs' possessions, and while the Aronoff's were en route to North Carolina, Dr. Aronoff received a telephone call from Donovan indicating that, contrary to the terms of the contract, no one would be present upon delivery to provide unpacking services. Despite Dr. Aronoff's disability, the Aronoffs were forced to unpack the first wave of their possessions themselves; upon doing so they discovered that many of their belongings were broken, damaged, or missing.

104. On or about October 21, 1994, Dr. Aronoff contacted John Riddle, an agent of Donovan and Mayflower acting within the scope of his apparent authority, by telephone. Riddle told Dr. Aronoff that despite the second trip that was required from Massachusetts, the move would be completed at the previously agreed upon price.

105. On or about February 7, 1995, Mr. Scott, an agent of Donovan and Mayflower acting within the scope of his apparent authority, sent the Aronoffs' attorney, Marvin Finn, a letter through the U.S. mail. The letter said that the goods Donovan had neglected to pick up from the Aronoffs' storage facility in Massachusetts would finally be delivered on February 14,

1995. The letter further demanded additional payment for the delivery above and beyond the price quoted for the original move.

106. Dr. Aronoff cancelled all his medical appointments for February 14, 1995 to be present for the delivery of his belongings.

107. On or about February 10, 1995, Dr. Aronoff received a telephone call from the driver hauling the remainder of his belongings. The driver told Dr. Aronoff that his delivery would be made on February 13 instead of February 14 as previously scheduled. Dr. Aronoff informed the driver that he would not be available to receive the goods on February 13 because of commitments to his medical practice. The driver suggested that Dr. Aronoff contact Mayflower directly to resolve the problem.

108. That same day Dr. Aronoff contacted Mayflower's office directly by telephone and explained that he would not be available on February 13, 1995 because the delivery had been scheduled in writing for the following day. The Mayflower representative informed him that his goods were being unloaded at a Mayflower agent's warehouse and that he would be required to pay additional storage costs before the goods would be redelivered.

109. On or about February 14, 1995, Mr. Scott again contacted Dr. Aronoff by telephone and told him that Mayflower would redeliver his belongings on February 17, 1995. Once again, Dr. Aronoff cancelled all his medical appointments for February 17 to be present at the delivery.

110. On or about February 16, 1995, Mr. Scott once again contacted Dr. Aronoff by telephone and told him that the delivery of his goods for the following day had been cancelled.

111. From February until at least October 1995, Dr. Aronoff made repeated demands that his goods be delivered. Authorized agents of the members of the Enterprise repeatedly refused,

wrongfully maintaining possession of the Aronoff's belongings, and demanding additional payment.

112. Donovan and Mayflower intentionally used the U.S. mail and interstate wires in furtherance of a scheme to fraudulently induce the Aronoffs into contracting for interstate shipping services based on their misrepresentations regarding the equipment to be used, services to be rendered, and timeliness of the shipment.

113. In addition, on information and belief, Mayflower and other members of the Enterprise have used the U.S. mail and/or interstate wires in furtherance of additional schemes to induce other individual customers/victims to contract with them for moving services, only to surprise them with additional charges after they had surrendered their goods into the possession of a member of the Enterprise. Information relating to such additional schemes and victims is exclusively within the Defendant's control.

COUNT I

BILL OF LADING - BREACH OF CONTRACT

114. Paragraphs 6 through 113 are incorporated herein by reference.

115. Mayflower entered into a valid contract with Plaintiff.

116. This contract is embodied in the Estimate/Order for Service, Admiral's confirmation letter, and the Bill of Lading. (Exhibits "A", "B" and "C" to the original Complaint).

117. Admiral's confirmation letter to Plaintiff indicated that Plaintiff could choose to pay with "cash, certified check or money order, or major credit card"

118. Admiral sent, and Plaintiff received, this confirmation letter in advance of shipment before her property was picked up in Atlanta, Georgia.

119. Plaintiff performed all conditions of the contract as she was available to accept delivery and willing and prepared to make payment by credit card, which she repeatedly offered to do when the truck carrying her property finally arrived at her residence on June 30, 1999.

120. Mayflower breached the contract by failing to make delivery by June 21, 1999.

121. Mayflower breached the contract by demanding a fee in excess of \$1,741.89.

122. Mayflower breached the contract by refusing to accept a major credit card from Plaintiff.

123. Mayflower breached the contract by refusing to deliver Plaintiff's property for a fee not in excess of \$1,741.89.

124. Mayflower is liable to Plaintiff for its failure to deliver Plaintiff's property pursuant to, *inter alia*, 49 U.S.C. §102, which provides:

125. If a bill of lading has been issued by carrier or his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation and commerce among the several states and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transit or (b) the holder of an order bill, who is given value in good faith, relying upon the description therein of the goods, or upon the shipment being made upon the date therein shown, for damages caused by the non-receipt by the carrier of all or part of the goods upon or prior to the date therein shown, ...

126. Mayflower is liable for the actual loss of Plaintiff's property pursuant to, *inter alia*, 49 U.S.C. §14706 (the "Carmack Amendment" to the Interstate Commerce Act, previously 49 U.S.C. §11707), which provide in relevant part:

127. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (1) the receiving carrier, (2) the delivering carrier, or (3) another carrier over whose line or route the property is transported in the United States ... when transported under a through bill of lading ...

128. Mayflower's actions resulted in Plaintiff's injury as described in Paragraph ____.

WHEREFORE, Plaintiff, Angie Chen, prays for judgment against Defendant Mayflower Transit, Inc. and relief as follows:

- (a) Award for damages for the actual loss of Plaintiff's property in an amount to be determined by a jury;
- (b) Award for punitive damages for Mayflower's improper demands for additional payment under the bill of lading and refusal to accept credit card payment for any amount under the bill of lading;
- (c) Award for damages in the amount not less than \$1,100.00, representing 100% of Plaintiff's hotel bills and 50% of Plaintiff's meals for the time period of June 22, 1999 through June 30, 1999, and additional costs incurred since June 30, 1999;
- (d) Award for all other incidental and consequential damages which resulted from defendant's breach of contract including, but not limited to, loss of income.
- (e) Award for attorneys' fees and costs; and
- (f) For such and further relief as the Court deems just and proper.

COUNT II

CONVERSION

129. Paragraphs 6 through 128 are incorporated herein by reference.

130. Plaintiff was willing and able to pay Mayflower the charges for her move, by major credit card, on June 30, 1999.

131. Mayflower and/or its agents, wrongfully and without justification or reason, refused to accept payment by major credit card.

132. Mayflower and/or its agents, on the pretext that Plaintiff could not make proper payment, refused to deliver and relinquish possession of Plaintiff's property.

133. Mayflower and/or its agents wrongfully assumed control and dominion over Plaintiff's property.

134. Plaintiff had the right to immediate possession of her property.

135. Plaintiff demanded the return of her property.

136. Mayflower threatened to auction Plaintiff's goods in order to obtain payment for the shipment.

WHEREFORE, Plaintiff, Angie Chen, prays for judgment against Defendant Mayflower Transit, Inc. and relief as follows:

- (a) An award for damages based upon defendant's wrongful deprivation of plaintiff's property;
- (b) Awarding attorneys' fees and costs; and
- (c) For such and further relief as the Court deems just and proper.

COUNT III

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

137. Paragraphs 6 through 136 are incorporated herein by reference.

138. Mayflower and/or its agents communicated to Plaintiff the threat to retain possession of Plaintiff's property and to dispose of Plaintiff's property through auction if Plaintiff did not pay the monies demanded by Mayflower.

139. These threats were made with the intent to cause Plaintiff to surrender a cash amount in great excess of \$1,741.89. The ultimate amount which Mayflower threatened to collect from Plaintiff was in excess of \$5,122.83 .

140. Mayflower had no lawful authority to demand or collect amount in excess of \$1,741.89.

141. Mayflower intended to inflict severe emotional distress upon Plaintiff to coerce Plaintiff into surrendering thousands of dollars which Mayflower was not entitled to receive.

142. Under the circumstances, Mayflower had no lawful authority to refuse to relinquish possession of Plaintiff's property or to put Plaintiff's property into storage.

143. Mayflower's conduct was extreme, outside all bounds of decency.

144. Mayflower and/or its agents retained possession of Plaintiff's property and refused to make delivery for an amount not in excess of \$1,741.89, until after the initiation of this action.

145. As a direct and proximate result of Mayflower's conduct, Plaintiff suffered severe emotional distress.

WHEREFORE, Plaintiff, Angie Chen, prays for judgment against Defendant Mayflower Transit, Inc. and relief as follows:

- (a) Award of damages to compensate her for emotional distress caused by Mayflower, said amount to be determined by a jury;
- (b) Award of punitive damages;
- (c) Award of attorneys' fees and costs; and
- (d) For such and further relief as the Court deems just and proper.

COUNT IV

NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS

146. Plaintiff incorporates by reference the allegations of paragraphs 6 through 145 of the Complaint as though fully set forth herein.

147. Mayflower had a duty to exercise reasonable care in soliciting and obtaining the agreement to move Plaintiffs' goods, in moving those goods and in its communications with Plaintiff concerning the goods which Mayflower failed to deliver.

148. Mayflower breached its duties and committed negligent acts in the following manner:

149. Either negligently refusing to accept payment for the move by credit card as indicated in the June letter received by Plaintiff or by negligently failing to make clear to Plaintiff what kind of payment would be accepted for delivery of the goods,

150. Failing to deliver the goods, despite being informed of Plaintiff's urgent need for certain of these items.

151. Threatening Plaintiff with the auction of her goods,
152. Incorrectly charging Plaintiff \$2,556.69 in violation of the "Binding Estimate,"
153. As a direct and proximate result of one or more of these negligent acts committed by Mayflower, Plaintiff sustained severe emotional distress.

WHEREFORE, Plaintiff, Angie Chen, prays for judgment against Defendant Mayflower Transit, Inc. and relief as follows:

- (a) Award of damages to compensate her for emotional distress caused by Mayflower, said amount to be determined by a jury;
- (b) Award of punitive damages;
- (c) Award of attorneys' fees and costs; and
- (d) For such and further relief as the Court deems just and proper.

COUNT V

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT
(Violation of 18 U.S.C. § 1962(c) and/or 1962(d))

154. Plaintiff incorporates by reference the allegations of paragraphs 6 through 153 as through fully set forth herein.

155. At all relevant times, Mayflower was an entity capable of holding a legal or beneficial interest in property.

156. Mayflower, Century, and Admiral, in addition to the other disclosed local agents of Mayflower, comprise a group of moving companies associated together and operating in concert as an Enterprise to market, sell, and provide interstate shipping services for household goods.

157. Mayflower participated in the operation and/or management of the Enterprise and played a part in directing the Enterprise's affairs.

158. In violation of 18 U.S.C. § 1962(c), Mayflower, Century, and Admiral engaged in various acts of racketeering including, but not necessarily limited to, mail fraud (in violation of 18 U.S.C. § 1341), wire fraud (in violation of 18 U.S.C. § 1343), theft from an interstate shipment (in violation of 18 U.S.C. § 659), and extortion/robbery (in violation of 18 U.S.C. § 1951).

159. Mayflower has engaged in a pattern of such racketeering activity, committing similar and related predicate acts of mail and wire fraud against other individual shippers including, but not limited to, Craig J. Petrowiak, Kate Rice, and Dr. Gerald M. Aronoff.

160. The practices constituting the predicate acts described herein are a regular way of doing business for the Enterprise.

161. The activities of the Enterprise described herein affect interstate commerce in that the Enterprise continues to contract with as many as 400 or more shippers per day to transport household goods across interstate lines.

162. The Plaintiff has suffered loss of property and other incidental and consequential damages including, but not limited to, loss of income by reason of the Defendant's racketeering activity.

163. Mayflower, Century, and Admiral conspired to violate 18 U.S.C. § 1962(c) by entering into an agreement to facilitate the activities of the operators or managers of the Enterprise.

164. Mayflower, Century, and Admiral each agreed that someone within the Enterprise would commit at least two predicate acts in furtherance of the goals of the Enterprise.

165. Because of this conspiracy, the Plaintiff has suffered loss of property and other incidental and consequential damages including, but not limited to, loss of income.

166. Pursuant to 18 U.S.C. § 1964(c), Plaintiff is entitled to triple damages plus attorneys fees.

WHEREFORE, Plaintiff, Angie Chen, prays for judgment against Defendant Mayflower Transit, Inc., and for relief as follows:

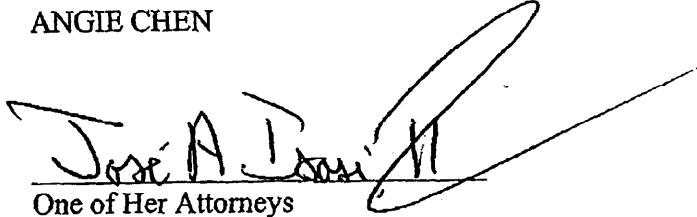
- (a) Award of damages to compensate her for loss of property and other incidental and consequential damages including, but not limited to, loss of income;
- (b) Statutory treble damages;
- (c) Award of attorneys' fees and costs; and
- (d) For such and further relief as the Court deems just and proper.

DATED: May 29, 2001

Respectfully submitted,

ANGIE CHEN

BY:


One of Her Attorneys

José A. Isasi, II
Carey L. Bartell
Sachnoff & Weaver, Ltd.
30 S. Wacker Drive
Suite 2900
Chicago, IL 60606
(312) 207-1000

Excerpt of deposition of defendant
Mayflower Transit, Inc. corporate
representative Sonja Pullaro,
taken in connection with Chen v.
Mayflower Transit, Inc., no. 99C6261
(N.D. Ill., original Complaint filed
Sept. 23, 1999).

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- [1] Q: Let's move to item number - oh, one more
[2] question in item 5.
[3] Mayflower - it's Mayflower's contention
[4] that Ms. Chen was not authorized to pay for her
[5] shipment by credit card; is that correct?
[6] A: Correct.
[7] Q: Nevertheless, Ms. Chen has submitted a
[8] claim to Mayflower based in part on her contention
[9] that she was authorized to pay by credit card. Is
[10] that your understanding?
[11] A: That's my understanding.
[12] Q: What - and you're aware of Ms. Chen's
[13] contentions that Mayflower's agent, Century,
[14] improperly sought to charge additional services to
[15] her; correct?
[16] A: I'm not sure about the improper part.
[17] Q: Okay. You're aware that Ms. Chen is
[18] contending that the additional services which
[19] Mayflower's agent attempted to charge her should
[20] not have been charged to her?
[21] A: I believe that's what she thinks.
[22] Q: Okay. With respect to these claims of
[23] Ms. Chen, what investigation has Mayflower
[24] conducted of Century?

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- [1] A: I personally have not conducted any
[2] investigation of Century, and I don't know that
[3] anyone else at Mayflower has or hasn't.
[4] Q: You're aware though that it's part of
[5] Mayflower's claims handling practices, policies
[6] and procedures to conduct investigations of claims
[7] made by shippers regarding overcharging for
[8] shipments; right?
[9] A: Could you read that back?
[10] (WHEREUPON, the record was read back
[11] by the reporter as requested.)
[12] BY THE WITNESS:
[13] A: Correct.
[14] BY MR. ISASI:
[15] Q: Okay. In fact, it's required by your
[16] tariff, isn't it?
[17] A: That we audit the charges?
[18] Q: That you conduct a claims investigation?
[19] A: I would need to look at the tariff.
[20] Q: Let me show you what we're going to mark
[21] as Exhibit No. 35.
[22] (WHEREUPON Plaintiff's Exhibit No.
[23] 35 was marked for identification)
[24]

<div>Page 165</div> <div><p>[1] BY MR. ISASI:</p><p>[2] Q: I'll be directing your attention to</p><p>[3] what's marked as original Page 66, which is the</p><p>[4] third page of this exhibit.</p><p>[5] You have before you, Ms. Pullaro, a</p><p>[6] document from the - a portion of the professional</p><p>[7] movers commercial relocation tariff, Section 1.</p><p>[8] It's marked at the top, original Page 66.</p><p>[9] And the first heading on the page is</p><p>[10] Section 5, Investigation of Claims. That section</p><p>[11] reads, "upon receipt of a claim, whether written</p><p>[12] or otherwise, the processing carrier shall</p><p>[13] promptly initiate an investigation and establish a</p><p>[14] file as required by Section 6." Did I read that</p><p>[15] properly?</p><p>[16] A: Yes, you did.</p><p>[17] Q: So it is, in fact, correct to say that</p><p>[18] Mayflower is required by its tariff to conduct an</p><p>[19] investigation of Ms. Chen's claim; correct?</p><p>[20] MR. REILLY: I'm going to object to this line</p><p>[21] of questioning as outside the scope of the notice.</p><p>[22] She can answer if she knows.</p><p>[23] BY MR. ISASI:</p><p>[24] Q: I'm not asking you about what you know</p></div>	<div>Page 167</div> <div><p>[1] Q: First of all, generally speaking, what is</p><p>[2] your knowledge of those instances? What do you</p><p>[3] know of them?</p><p>[4] A: First, the booking agent has to agree to</p><p>[5] make an exception to the tariff item for</p><p>[6] acceptance of a credit card at delivery.</p><p>[7] Q: What's the next step?</p><p>[8] A: Then if they agree, the customer would</p><p>[9] need to go to the closest Mayflower agent, fill</p><p>[10] out the paper work, verify the card. The</p><p>[11] authorization would then have to be submitted to</p><p>[12] Mayflower headquarters, and they would see how</p><p>[13] quickly they could get that processed.</p><p>[14] Q: Okay. So if I understand your</p><p>[15] description correctly, there's no additional step</p><p>[16] required for a shipper to get approval of a</p><p>[17] payment by credit card when the shipment is being</p><p>[18] delivered versus when the estimate is being</p><p>[19] provided; is that correct?</p><p>[20] A: No.</p><p>[21] Q: What's the additional step?</p><p>[22] A: The customer would have to physically go</p><p>[23] to the Mayflower agent location.</p><p>[24] Q: Okay.</p></div>
<div>Page 166</div> <div><p>[1] about the investigation. I'm asking you about the</p><p>[2] tariff.</p><p>[3] A: That's what the tariff says.</p><p>[4] Q: Now, in your preparation for your</p><p>[5] testimony here today, did anyone at Mayflower</p><p>[6] bring to your attention the results of any</p><p>[7] internal investigation done by Mayflower of</p><p>[8] Century?</p><p>[9] A: No.</p><p>[10] Q: Topic No. 6 of the deposition notice</p><p>[11] concerns Mayflower's policies and procedures with</p><p>[12] respect to requests by shippers to tender payment</p><p>[13] by major credit card. What is your understanding</p><p>[14] of Mayflower's policy, and if there's a document</p><p>[15] here that would help you?</p><p>[16] A: The credit card must be tendered and</p><p>[17] approved prior to Mayflower receiving the</p><p>[18] shipment.</p><p>[19] Q: Now, are you aware of instances in which</p><p>[20] shippers have sought to pay for shipment by credit</p><p>[21] card when approval was not previously sought, and</p><p>[22] nevertheless, Mayflower's agent accepted the</p><p>[23] credit card payment?</p><p>[24] A: Yes.</p></div>	<div>Page 168</div> <div><p>[1] A: At destination.</p><p>[2] Q: Setting aside the fact that the shipper</p><p>[3] is not required when getting prior approval to pay</p><p>[4] by credit card to physically go to the Mayflower</p><p>[5] agent's office, are there any additional steps</p><p>[6] required for a shipper to pay for shipment by</p><p>[7] credit card without prior approval?</p><p>[8] A: Not to my knowledge.</p><p>[9] Q: Now, as part of your investigation in</p><p>[10] preparation for your testimony here today or at</p><p>[11] any time, are you aware of specific instances in</p><p>[12] which Mayflower and its agents have, in fact,</p><p>[13] accepted credit card payment for shipment without</p><p>[14] prior authorization?</p><p>[15] A: I did call the credit and collection</p><p>[16] department and ask them that question.</p><p>[17] Q: What was the answer?</p><p>[18] A: Yes, it can happen.</p><p>[19] Q: Did they tell you anything else in that</p><p>[20] conversation other than yes, it can happen?</p><p>[21] A: It can happen. Sometimes they're</p><p>[22] approved, sometimes they're not approved,</p><p>[23] depending on the customer's credit. And that it</p><p>[24] does have to happen during normal business hours,</p></div>